

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC and the estate of Bernard L.
Madoff,

Plaintiff,

v.

MERITZ FIRE & MARINE INSURANCE
CO., LTD.,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 11-02539 (CGM)

STIPULATION AND ORDER

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”), and the estate of Bernard L. Madoff, individually, and defendant Meritz Fire & Marine Insurance Co., Ltd. (the “Defendant,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

WHEREAS, on August 18, 2011, the Trustee filed his original complaint (the “Complaint”) in the above captioned adversary proceeding against the Defendant to recover subsequent transfers the Defendant allegedly received from Fairfield Sentry Limited;

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers allegedly received from Fairfield Sentry Limited (among other transferees) on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 at *1 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court ET Decision dismissed the claim against the Defendant;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on August 29, 2019, Defendants filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277, 2019 WL 4190391 at *1 (Aug. 29, 2019);

WHEREAS, on December 20, 2019, in adversary proceedings that are unrelated to this action, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision granting, in part, the motion to dismiss the Trustee’s amended complaint in another adversary

proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the “Good Faith Appeals”);

WHEREAS, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee’s petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25;

WHEREAS, on June 1, 2020, the Supreme Court denied Defendants’ Petition for a Writ of Certiorari concerning the Second Circuit’s ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, No. 19-277, 2020 WL 2814770 at *1 (Jun. 1, 2020);

WHEREAS, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF No. 1582, vacating the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with the ET and Comity Decision;

WHEREAS, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *See In re BLMIS LLC*, 12 F. 4th 171 (2d Cir. 2021) (the “Good Faith Decision”);

WHEREAS, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court’s good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court’s decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) and *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM). *See Mandate*, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; *Mandate*, Case No. 20-1334 (2d Cir. Oct. 13, 2021), ECF No. 187; and

IT IS HEREBY STIPULATED AND AGREED, that the Defendant shall respond to the Complaint on or before April 11, 2022. If the Defendant files a motion to dismiss the Complaint, the Trustee shall respond to the motion on or before June 10, 2022 and the deadline for the Defendant to file a reply shall be July 11, 2022.

IT IS HEREBY STIPULATED AND AGREED, that if the Defendant files such a motion to dismiss the Complaint, then the parties shall seek oral argument on the motion at the Court's first available convenience.

Dated: January 10, 2022
New York, NY

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*Attorneys for Defendant Meritz Fire & Marine
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SO ORDERED.

**Dated: January 11, 2022
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge**